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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,561	12/14/2001	Laurence J. Cull	P02620	8073
7590	02/27/2004		EXAMINER	
Michael L. Smith Bausch & Lomb Inc. One Bausch & Lomb Place Rochester, NY 14604-2701			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	
			DATE MAILED: 02/27/2004	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/017,561	CULL, LAURENCE J.	
	Examiner	Art Unit	
	Michael Thaler	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 February 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (6,258,111) in view of Graham (4,827,615). Ross et al. disclose a vitreous cutter (col. 1, lines 14-17) comprising housing 26, pneumatic motor (col. 4, lines 31-33) attached within the housing, cam 34 and vitrectomy probe 18. Ross et al. fails to specifically indicate that the pneumatic motor has rotatable vanes. However, pneumatic motors typically have rotatable vanes. For example, Graham teaches that fluid motors used in surgical instruments are "turbine motors" (col. 15-18), (noting that a turbine, by definition, has rotatable vanes) wherein the turbine has the self-evident advantage of providing power to a rotatably shaft by directing pressurized fluid to the vanes of the turbine. It would have been obvious to include turbine vanes in the Ross et al. pneumatic motor so that it too would have this advantage.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (6,258,111) in view of Graham (4,827,615) as applied to claim 1 above, and further in view of Hartman et al. (4,108,182). Ross et al. fail to disclose a cam-plate and spring in the mechanism 34, 38 that converts cam rotation to reciprocating movement of the vitrectomy probe. However, Hartman et al. teach that a mechanism that converts cam rotation to reciprocating movement of the vitrectomy probe should include a cam-plate (at 88) and spring 86 apparently to insure that the cam-plate smoothly and continuously contacts the cam 80. It would have been obvious to include a cam-plate and spring in the Ross et al. mechanism that converts cam rotation to reciprocating movement so that it too would have this advantage.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (6,258,111) in view of Graham (4,827,615) as applied to claim 1 above, and further in view of Trott et al. (5,803,733). Ross et al. fail to disclose a brake on the pneumatic motor for selectively stopping rotation of the cam 34. However, Trott et al. teach that a pneumatic motor for a surgical instrument should include a brake to quickly prevent operation of the device as pressure is turned off (col. 2, lines 30-33). It would have been obvious to include a brake on the

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Ross et al. pneumatic motor so that it too would have this advantage. As to claim 6, the Trott et al. brake includes resilient arm 154 fixedly attached to the housing (at the distal end of 156) at one end (by frictional contact), brake-block 152 attached to an opposing end of the arm 154 (by frictional contact), wherein the resilient arm is deflected by the pressurized fluid to allow rotation of the motor (col. 5, lines 47-51). Trott et al. fail to disclose a notch on the shaft 124 to receive the brake-block. However, it is old and well known in this art to provide a notch on a rotatable shaft to receive the brake-block of a brake in order to insure that the brake-block positively engages the rotatable shaft to stop rotation thereof. It would have been obvious to include a notch on the Trott et al. rotatable shaft 124 so that it too would have this advantage. Assuming arguendo that the ends of resilient arm 154 are not considered to be fixedly attached to the housing and brake-block 152, it is old and well known in this art to positively and fixedly attach the ends of a spring to the parts that it contacts in order to insure that the assembly is positively secured together. It would have been obvious to so fixedly attach the ends of resilient arm 154 Trott et al. to the adjacent parts so that it too would have this advantage.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note col. 8, lines 18-21 of Helfgott et al. (4,314,560).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
2/23/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731